IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.148 OF 2006

Mrs.Yamunabai Shivaji Bhambre .. Petitioner

Versus

Rafiq Bashir Shaikh & Ors. .. Respondents

Mr.Nitin Mulye for petitioner

Ms.Smita Gaidhani for respondent No.1

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th January 2006.

P.C.

. Heard Mr.Mulye for petitioner and Ms.Gaidhani for respondent No.1.

2. Petitioner is aggrieved by the order passed by the trial court which was challenged in appeal but the Civil Misc.Appeal has been dismissed as not maintainable.

3. The trial court upon an application preferred by the first respondent - original plaintiff, directed petitioner - defendant No.1 in Regular Civil Suit No.128 of 2001, to remove all obstructions which have been put on the road by herself, within 15 days from the date of the order i.e. 15th December 2005 failing which the Court Commissioner appointed by the Court would remove or cause to remove all obstructions on the road in question.

4. Mr.Mulye appearing for petitioner, upon taking instructions from Mr.Somnath Bhambre, son of petitioner, who is personally present in court, makes a statement that petitioner (original defendant No.1) would file undertaking

by 23rd January 2006 in the trial court incorporating therein her specific undertaking that within a period of three weeks from the date of filing of such undertaking, she will remove, at her own cost and expenses, all such obstructions on the road and more particularly those which have been specified in the order passed by the trial court on 15th December 2005.

5. In the light of this statement of Mr.Mulye, petition is disposed of as not pressed. Mr.Mulye states that the undertaking would be filed by 23rd January 2006. Needless to state that if such undertaking is not filed by 23rd January 2006, or upon such undertaking being filed but the obstructions not removed as undertaken the trial court to proceed in accordance with the order dated 15th December 2005.

6. Needless to further add that all

directions issued in the impugned order are without prejudice to the rights and contentions of both sides and the regular civil suit which is presently being tried shall be disposed of on its own merits and in accordance with law. All parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)